

## **Chapter 7**

### **BUILDINGS AND BUILDING REGULATIONS**

#### **Articles:**

<b>7-1</b>	<b>TECHNICAL CODES</b>
<b>7-2</b>	<b>FEEES</b>
<b>7-3</b>	<b>POLLUTION REDUCTION</b>
<b>7-4</b>	<b>BUILDING OFFICIAL</b>
<b>7-5</b>	<b>UTILITY POLES AND WIRES</b>
<b>7-6</b>	<b>NOISE REGULATIONS DURING CONSTRUCTION</b>
<b>7-7</b>	<b>RESERVED</b>
<b>7-8</b>	<b>PLANNING, BUILDING AND ENGINEERING FEES</b>
<b>7-9</b>	<b>RESERVED</b>
<b>7-10</b>	<b>DEVELOPMENT FEES</b>
<b>7-11</b>	<b>ENFORCEMENT OF STATE RESIDENTIAL RENTAL PROPERTY REGISTRATION</b>
<b>7-12</b>	<b>ILLEGAL CONSTRUCTION SITE ACTIVITY</b>

## Article 7-1

### TECHNICAL CODES

#### Sections:

**7-1-1 Adoption by Reference; Violations**

**7-1-2 Repealed**

**Section 7-1-1 Adoption by Reference; Violations**

- A. The following listed publications, three copies of which are on file in the office of the town clerk and which are available for public inspection during normal business hours, are hereby adopted by reference, together with all appendices and supplements thereto, as if set out at length in this code:
1. The International Building Code, 2006 Edition and all supplements, as published by the International Code Council.
  2. The International Mechanical Code, 2006 Edition and all supplements, as published by the International Code Council.
  3. The National Electrical Code, 2005 Edition and all supplements, as published by the National Fire Protection Association.
  4. The Uniform Swimming Pool, Spa and Hot Tub Code, 2006 Edition and all supplements, as published by the IAPMO.
  5. The Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition and all supplements, as published by the International Conference of Building Officials.
  6. The International Plumbing Code, 2006 Edition and all supplements, as published by the International Code Council.
  7. The Maricopa Association of Governments Standard Specifications and Uniform Details for Public Works Construction.
  8. The International Energy Conservation Code, 2006 Edition of all supplements, as published by the International Code Council.
  9. The International Fire Code, 2006 Edition and all supplements, as published by the International Code Council.
  10. The International Residential Code, 2006 Edition including Appendix G and all supplements, as published by the International Code Council.
  11. The International Fuel Gas Code, 2006 Edition and all supplements, as published by the International Code Council.
  12. The Fountain Hills Amendments to the 2006 International Building Code, the 2006 International Residential Code for One- and Two-Family Dwellings, the 2006 International

Energy Conservation Code and the 2006 International Fire Code.

B. It is unlawful for any person to violate any of the provisions of the publications adopted in subsection A of this section.

C. Penalties for Violating the Technical Codes

1. General

Any person found guilty of violating any provision of the publications adopted in subsection A of this section shall be subject to a civil sanction for the first such violation, punishable by a fine not to exceed \$2,500.00 base fine and, for a subsequent violation thereof, shall be guilty of a class one misdemeanor, punishable by a fine not to exceed \$2,500.00 base fine or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment. Each day that a violation continues shall be a separate offense.

2. Civil Sanction

Any person that commits a civil violation shall be subject to a civil (non-criminal) action in any court of competent jurisdiction to collect a civil penalty for a sum not to exceed, \$2,500.00 base fine for each violation.

3. Criminal Violation

A person that commits a criminal violation shall be subject to a criminal action in any court of competent jurisdiction and, if found guilty thereof, shall be guilty of a class one misdemeanor, punishable by a fine not to exceed \$2,500.00 base fine or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment.

4. Violations Not Exclusive

Violations of this section are in addition to any other violation enumerated within the Town's ordinances and codes and in no way limit the penalties, actions or abatement procedures, which may be taken by the Town for any violation of this section, which is also a violation of any other ordinance or code provision of the Town or statutes of the state.

(08-14, Amended, 10/16/2008, text addition; 08-07, Amended, 04/17/2008; 03-12, Amended, 08/07/2003)

**Section 7-1-2 Repealed**

Repealed

(08-14, Repealed, 10/16/2008; Ordinance 01-08, Amended, 03/01/2001, Adopted by Council 3/1/01)

## **Article 7-2**

### **FEES**

#### **Sections:**

#### **7-2-1 Fees**

#### **Section 7-2-1 Fees**

- A. Permit Fees. The permit fee for all new structures and for all renovation, remodeling and repairs, shall be in such amount as approved by the Council by resolution or as part of the Town's annual budget
- B. Plan Review Fees. When a plan or other data for all new structures and for all renovation, remodeling and repairs is required to be submitted, a plan review fee shall be paid at the time of submitting plans and specifications for review. Said plan review fee shall be in such amount as approved by the Council by resolution or as part of the Town's annual budget.

(98-28, Amended, 09/03/1998)

(09-08, Amended, 07/02/2009; 08-14, Amended, 10/16/2008)

## **Article 7-3**

### **POLLUTION REDUCTION**

#### **Sections:**

#### **7-3-1 Fireplace Restrictions**

#### **Section 7-3-1 Fireplace Restrictions**

- A. For the purposes of this Section, the following words and terms shall have the meaning ascribed thereto:
1. "Fireplace" means a built-in place masonry hearth and fire chamber or a factory-built appliance designed to burn solid fuel or to accommodate a gas or electric log insert or similar device, and which is intended for occasional recreational or aesthetic use, not for cooking, heating, or industrial processes.
  2. "Solid fuel" means and includes, but is not limited to, wood, coal or other nongaseous or nonliquid fuels, including those fuels defined by the Maricopa County Air Pollution Control Officer as "inappropriate fuel" to burn in residential woodburning devices.
  3. "Woodstove" means a solid-fuel burning heating appliance including a pellet stove, which is either freestand or designed to be inserted into a fireplace.
- B. On or after January 4, 1999, no person, firm or corporation shall construct or install a fireplace or a woodstove, and the Town shall not approve or issue a permit to construct or install a fireplace or a woodstove, unless the fireplace or woodstove is one of the following:
1. A fireplace which has a permanently installed gas or electric log insert;
  2. A fireplace, woodstove or other solid-fuel burning appliance that has been certified by the United States Environmental Protection Agency as conforming to 40 CFR Part 60, Subpart AAA, or any amendments thereto;
  3. A fireplace, woodstove or other solid-fuel burning appliance that has been tested and listed by a nationally recognized testing agency to meet performance standards equivalent to those adopted by 40 CFR Part 60, Subpart AAA, or any amendments thereto;
  4. A fireplace, woodstove or other solid-fuel burning appliance that has been determined by the Maricopa County Air Pollution Control Officer to meet performance standards equivalent to those adopted by 40 CFR Part 60, Subpart AAA, or any amendments thereto; or

5. A fireplace that has a permanently installed woodstove insert that complies with paragraphs 2, 3 or 4 above.
- C. The following installations are not regulated and are not prohibited by this Section:
1. Furnaces, boilers, incinerators, kilns and other similar space heating or industrial process equipment;
  2. Cookstoves, barbecue grills and other similar appliances designed primarily for cooking; and
  3. Firepits, barbecue grills and other outdoor fireplaces.
- D. Fireplaces constructed or installed on or after January 4, 1999 that contain a gas or electric log insert or a woodstove insert shall not be altered to directly burn wood or any other solid fuel.
- E. On or after January 4, 1999, no person, firm or corporation shall alter a fireplace, woodstove or other solid fuel burning appliance in any manner that would void its certification or operational compliance with the provisions of this Section.
- F. In addition to the provisions and restrictions of this Section, construction, installation or alteration of all fireplaces, woodstoves and other gas, electric or solid-fuel burning appliances and equipment shall be done in compliance with the provisions of the Town Code and shall be subject to permits and inspections required by the Town.
- G. Fireplaces constructed or installed on or after January 4, 1999 shall not be altered without first obtaining a permit from the Town to ensure compliance with this Section.

(98-34, Added, 12/03/1998)

## **Article 7-4**

### **BUILDING OFFICIAL**

#### **Sections:**

**7-4-1            Building Official**

**Section 7-4-1   Building Official**

The building official and administrative authority, as such may be referenced in any section of this chapter for all matters pertaining to any building, plumbing, electrical or any other inspections, shall be vested in the office of the town manager or such other person the manager may appoint subject to council approval.

## **Article 7-5**

### **UTILITY POLES AND WIRES**

#### **Sections:**

- 7-5-1 Definitions**
- 7-5-2 Permit for Erection; Exceptions**
- 7-5-3 Procedure for Obtaining Permit; Denial and Appeal**
- 7-5-4 Standards for Issuance of Permits**
- Section 7-5-1 Definitions**

In this article unless the context requires otherwise:

- A. "Distribution feeder" means that portion of the distribution system feeding from a distribution substation to a specific load area having a capacity of over three thousand KVA.
- B. "Existing utility poles and wires" means such poles and wires and other facilities as are in place and in operation as of the effective date of this code and including repairs, replacements, relocations on the same alignment, additions, enlargements, betterments, changes or improvements hereinafter made to maintain or increase service capabilities of existing utility poles, wires, service drops and other facilities, but it does not include extensions made to existing distribution lines.
- C. "Transmission line" means an electric line used for the bulk transmission of electricity between generating or receiving points and major substations or delivery points, having a rating of over twelve thousand volts.
- D. "Utility poles and wires" means poles and structures, wires, cables, transformers and all other facilities used in or as a part of the distribution or transmission of telephone, telegraph, radio or television communications.

#### **Section 7-5-2 Permit for Erection; Exceptions**

After the effective date of this code, no new utility poles and wires shall be erected in the town above the surface of the ground unless a permit is first secured therefore from the town manager or his designee; except that the following construction may be installed without such a permit:

- A. Temporary service facilities, such as facilities to furnish emergency service during an outage, facilities to provide service to construction sites, or other service of a limited duration, such as to a fair, carnival, outdoor exhibit or other function where the facilities will be installed for a temporary period only.
- B. Pad-mounted transformers or pull boxes, service terminals, pedestal-type telephone terminals, telephone splice closures, or similar on-the-ground facilities normally used with and as a part of an underground electric distribution, telephone, telegraph or television system, or on-the-ground facilities attached to existing overhead facilities which are used for the purpose of connecting an underground system with the existing facilities.



- C. Transmission lines and distribution feeder lines, together with related switch yards, substations and related equipment. Service drops from existing overhead lines to new single family residential customers, except when underground service is required by the town's subdivision regulations.

### **Section 7-5-3 Procedure for Obtaining Permit; Denial and Appeal**

Any person seeking a special permit for erection of any new utility poles and wires within the town boundaries and above the surface of the ground shall first make application therefore to the town manager or his designee which application shall be approved or denied. In the event the permit is denied, the applicant may appeal the decision of the town manager or his designee by presenting his objections in writing to the council with a copy to the town manager or his designee within ten days of the town manager's or his designee's denial. The town manager or his designee may grant the permit within five days or shall submit the appeal together with a written report of his recommendations to the council within twenty days of the date of receipt of the appeal. The council may hear arguments and shall decide the matter.

### **Section 7-5-4 Standards for Issuance of Permits**

A special permit for erection of new utility poles and wires may be granted only in the event the applicant makes an affirmative showing that the public's general health, safety and welfare and that of adjacent property owners will not be impaired, endangered or jeopardized by the proposed erection. In deciding such matter, the following factors shall be considered:

- A. The location and height of such poles and wires and their relation to present or potential future roads.
- B. The crossing of such lines over much traveled highways or streets; the proximity of such lines to schools, churches or other places where people congregate.
- C. The probability of extensive flying in the area where such poles and wires are proposed to be located and the proximity to existing or proposed airfields.
- D. Fire or other accident hazards from the presence of such poles and wires and the effect, if any, of same upon the effectiveness of fire fighting equipment.
- E. The aesthetics involved.
- F. The future conditions that may be reasonably anticipated in the area in view of a normal course of development.
- G. The practicality and feasibility of underground installations of such facilities with due regard for the comparative costs between underground and overground installations; but a mere showing that an underground installation shall cost more than an overground installation shall not in itself necessarily require issuance of a permit.

## **Article 7-6**

### **NOISE REGULATIONS DURING CONSTRUCTION**

#### **Sections:**

**7-6-1 Regulations**

**7-6-2 Penalties**

**Section 7-6-1 Regulations**

- A. During the times hereinafter set forth, no construction activities of any kind, including but not limited to the making of an excavation, clearing of surface land and loading or unloading material, equipment or supplies, or the operation of mechanically powered tools anywhere in the town limits, shall be permitted, when such activities result in the generation of mechanically or electrically created noise that can be heard by a person with normal hearing within a residential building, the windows of which are closed, if such building is located within five hundred feet of the construction site.
- B. The foregoing limitations shall apply to the following times:
1. Prior to 5:30 a.m. and after 6:30 p.m. Monday through Friday from May 15 through September 15.
  2. Prior to 6:00 a.m. and after 6:30 p.m. Monday through Friday during the remainder of the year.
  3. Prior to 7:00 a.m. and after 5:00 p.m. on Saturdays throughout the year.
  4. At all times during Sundays and Legal Holidays.
- C. The following activities shall be excluded from such prohibition:
1. Noise resulting from perishable activities, defined as all concrete flat work, termite pre-treatment application and the delivery of perishable landscaping materials shall be allowed as necessary.
  2. Noise generated by work being performed by a resident of a building or structure may continue until 10:00 p.m. but may not begin earlier than the times set forth in subsection B of this section.
  3. Noise resulting from emergencies, including but not limited to, repair of roofs, windows, doors, electrical, plumbing and mechanical (HVAC) shall be permitted whenever necessary. An emergency shall be defined as any situation where work must be performed in order to prevent serious injury to persons or property.

#### **Section 7-6-2 Penalties**

Violation of any provision of Section 7-6-1 is a civil offense. The municipal court of the town shall

conduct a hearing and shall assess a sanction of one hundred dollars for a first violation; two hundred dollars for a second violation and five hundred dollars for all subsequent violations. Each day a violation occurs shall constitute a separate event.

## **Article 7-7**

### **RESERVED**

#### **Sections:**

**7-7-1           Reserved**

**7-7-2           Reserved**

**7-7-3           Reserved**

**7-7-4           Reserved**

**7-7-5           Reserved**

**Section 7-7-1   Reserved**

Reserved

(08-14, Repealed, 10/16/2008)

**Section 7-7-2   Reserved**

Reserved

(08-14, Repealed, 10/16/2008)

**Section 7-7-3   Reserved**

Reserved

(08-14, Repealed, 10/16/2008)

**Section 7-7-4   Reserved**

Reserved

(08-14, Repealed, 10/16/2008)

**Section 7-7-5   Reserved**

Reserved

(08-14, Repealed, 10/16/2008)

## **Article 7-8**

### **PLANNING, BUILDING AND ENGINEERING FEES**

#### **Sections:**

#### **7-8-1 Planning, Building and Engineering Fees**

##### **Section 7-8-1 Planning, Building and Engineering Fees**

The fees for services provided by the Planning Division, the Building Division and the Engineering Division shall be established by the Town Council as part of the annual budget process or as otherwise adopted by Town Council resolution.

(06-09, Amended, 05/04/2006)

## **Article 7-9**

### **RESERVED**

#### **Sections:**

**7-9-1           Reserved**

**7-9-2           Reserved**

**7-9-3           Reserved**

**7-9-4           Reserved**

**7-9-5           Reserved**

**Section 7-9-1   Reserved**

Reserved

(08-14, Repealed, 10/16/2008; 03-12, Amended, 08/07/2003)

**Section 7-9-2   Reserved**

Reserved

(08-14, Repealed, 10/16/2008; 03-12, Amended, 08/07/2003)

**Section 7-9-3   Reserved**

Reserved

(08-14, Repealed, 10/16/2008; 03-12, Amended, 08/07/2003)

**Section 7-9-4   Reserved**

Reserved

(08-14, Repealed, 10/16/2008)

**Section 7-9-5   Reserved**

Reserved

(08-14, Repealed, 10/16/2008; 03-12, Amended, 08/07/2003)

## **Article 7-10**

### **DEVELOPMENT FEES**

#### **Sections:**

<b>7-10-1</b>	<b>Purpose and Intent</b>
<b>7-10-2</b>	<b>Definitions</b>
<b>7-10-3</b>	<b>General Provision; Applicability</b>
<b>7-10-4</b>	<b>Procedures for Imposition, Calculation and Collection of Development Fees</b>
<b>7-10-5</b>	<b>Establishment of Development Fee Accounts; Appropriation of Development Funds; and Refunds</b>
<b>7-10-6</b>	<b>Appeals</b>
<b>7-10-7</b>	<b>Exemptions/Waivers</b>
<b>7-10-8</b>	<b>Fees</b>
<b>7-10-9</b>	<b>Permit Issuance</b>
<b>7-10-10</b>	<b>Repealed</b>
<b>7-10-11</b>	<b>Repealed</b>
<b>7-10-12</b>	<b>Repealed</b>
<b>7-10-13</b>	<b>Renumbered</b>

#### **Section 7-10-1 Purpose and Intent**

The purposes and intent of these development fee procedures are:

- A. To establish uniform procedures for the imposition, calculation, collection expenditure and administration of development fees imposed upon new development;
- B. To implement the goals, objectives and policies of the Fountain Hills General Plan so that to assure that new development contributes its fair share towards the costs of public facilities reasonably necessitated by such new development;
- C. To ensure that new development is reasonably benefited by the provision of the public facilities provided with the proceeds of development fees;
- D. To ensure that all applicable legal standards and criteria are properly incorporated in these procedures;
- E. To ensure that all applicable procedures and requirements of Arizona Revised Statutes § 9-463.05 have been met.

(00-21, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

#### **Section 7-10-2 Definitions**

The words or phrases used herein shall have the meaning prescribed in the current Fountain Hills Town Code except as otherwise indicated herein:

- A. Applicant – any person who files an application with the Town for a building permit.

- B. Appropriation or to appropriate – an action by the Town to identify specific public facilities for which development fee funds may be utilized. Appropriation shall include, but shall not necessarily be limited to: inclusion of a public facility in the adopted Town budget or capital improvements program; execution of a contract or other legal encumbrance for construction of a public facility using development fee funds in whole or in part; and/or actual expenditure of development fee funds through payments made from a development fee account.
- C. Commercial or industrial use – means any use or establishment not defined as a dwelling unit.
- D. Connection – means the physical tie-in of a developer's water, effluent or sewer service to a water, effluent or sewer main.
- E. Director – the Town Manager or authorized designee.
- F. Developer – means the individual, firm, corporation, partnership, association, syndication, trust or other legal entity that is responsible for creating a demand for Town facilities and services.
- G. Development Fee – a fee adopted pursuant to Arizona Revised Statutes § 9-463.05 which is imposed on new development on a pro rata basis in connection with and as a condition of the issuance of a building permit and which is calculated to defray all or a portion of the costs of the public facilities required to accommodate new development at Town-designated level of service (LOS) standards and which reasonably benefits new development.
- H. Development Fee Adoption and Imposition – this Ordinance establishes procedures and requirements for all development fees which may be adopted by the Town; provided, however, that in order to impose a development fee for a particular public facility, the Town shall prepare a written report, notice, schedule and hold a public hearing; and otherwise comply with all applicable requirements of Arizona Revised Statutes § 9-463.05 and this Ordinance.
- I. Development Fee Calculation Methodology Report – that report entitled "Town of Fountain Hills Development Fee Study, final report dated September, 2005, and two written addenda dated December 30, 2005, entitled "Town of Fountain Hills Development Fee Study, Final Report Addendum with State Trust Land" and "Town of Fountain Hills Development Fee Study, Final Report Addendum without State Trust Land", that were all prepared by Red Oak Consulting.
- J. Development Fee District Maps – the map(s) defining the geographical extent of development fee districts, if any, for each adopted development fee, as may be necessary.
- K. District or Development Fee District – a defined geographical area or sub-area of the Town and/or its planning area within which particular public facilities are provided and in which development fees will be collected, appropriated, and expended for public facilities serving



new development within such area or sub-area.

- L. Dwelling Unit – means a room or group of rooms within a building containing cooking accommodations and designed to be used for living purposes. Each apartment unit, mobile home, mobile home space, travel trailer or travel trailer space shall be considered a dwelling unit. Dwelling unit shall not include those units designed primarily for transient occupant purposes, nor shall they include rooms in hospitals or nursing homes.
  - 1 Single-Family Detached Dwelling Unit – means a dwelling unit designed and used by only one family and which unit is physically separated from any other dwelling unit.
  - 2. All Other Dwelling Units – means a dwelling unit typically designed and used for only a single family, but which is either attached to another dwelling unit, such as an apartment, duplex, townhouse or single-family attached dwelling unit such as a guest house, or which is a mobile home or travel trailer.
- M. Fire and Emergency Development Fee - a fee imposed on all new residential and non-residential development to fund the proportionate share of the costs of: fire and emergency buildings and facilities, communication systems and vehicles and major capital equipment.
- N. General Government Development Fee – a fee imposed on all new residential and non-residential development to fund the proportionate share of the costs of: municipal office space and Town owned and operated vehicles and major capital equipment.
- O. Governing Body – the Mayor and Common Council of the Town of Fountain Hills, Arizona.
- P. Law Enforcement Development Fee - a fee imposed on all new residential and non-residential development to fund the proportionate share of the costs of : law enforcement buildings and facilities, communication systems and vehicles and major capital equipment.
- Q. Library and Museum Development Fee - a fee imposed only on new residential development to fund the proportionate share of the costs of: public library and museum buildings and facilities and major capital equipment.
- R. Multiple Uses – a new development consisting of both residential and non-residential uses, or one (1) or more different types of non-residential use, on the same site or part of the same new development.
- S. Municipal Planning Area – an area outside of the present Fountain Hills Town limits, but in which the Town may provide public facilities and services.
- T. New Development – any new construction, reconstruction, redevelopment, rehabilitation, structural alteration, structural enlargement, structural extension, or new use which requires a building permit; any change in use of an existing non-residential building, structure or lot

requiring any form of Town building permit or approval, and which increases the demand for one (1) or more public facilities or services as herein defined; or, any change in use of an existing residential or non-residential building or structure or change in the use of land, which requires an increase in water meter size or installation of a larger water meter, except as otherwise provided in Section 3.E hereof.

- U. Open Space Development Fee – a fee imposed only on new residential development to fund the proportionate share of the costs of: open space, including but not necessarily limited to, open space lands, hillside slope preservation, development rights, desert mountain preserves, trails, trailheads, and vehicular access rights of way.
- V. Parks and Recreation Development Fee – a fee imposed only on new residential development to fund the proportionate share of the costs of: community parks, including but not limited to, development rights and/or construction easements and recreation facilities and improvements (but expressly excluding private neighborhood parks).
- W. Public Facility or Service – public improvements, facilities or services necessitated by new development, including, but not limited to, law enforcement facilities, streets, parks and recreation, open space, libraries, general government, public works, community facilities, municipal facilities, flood control and drainage, utilities and educational facilities.
- X. Public Facility Expenditures – include amounts appropriated in connection with the planning, design, engineering and construction of public facilities; planning, legal, appraisal and other costs related to the acquisition of land, financing and development costs; the costs of compliance with purchasing procedures and applicable administrative and legal requirements; and all other costs necessarily incident to provision of the public safety.
- Y. Street Development Fee – a fee imposed on all new residential and non-residential development to fund the proportionate share of the costs of: transportation improvements and the widening of existing roads designed to solve congestion-related problems that are anticipated from increased traffic demands resulting from new development, and including improvements to principal and minor arterials and/or collectors needed for access and traffic mobility, but excluding project-specific traffic and transportation improvements such as turn lanes, individual traffic signals for the benefit of a specific development project and the like.

(06-02, Amended, 01/05/2006; 00-21, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

### **Section 7-10-3 General Provision; Applicability**

- A. Term. This Ordinance and the procedures established herein shall remain in effect unless and until repealed, amended or modified by the Mayor and Common Council in accordance with applicable State law and the Town Code, ordinances and resolutions.
- B. Review.
  - 1 At least once every five years, and no later than July 1 of every fifth year, beginning July 1, 2005, and prior to Common Council adoption of the Town's annual budget for that year, the Town Manager or his designee shall coordinate the preparation and submission of a report to the

Mayor and Common Council on the subject of development fees.

2. The report may include any or all of the following:
  - a. recommendations for amendments, if appropriate, to these procedures or to specific ordinances adopting development fees for particular public facilities;
  - b. proposed changes to the Fountain Hills General Plan or plan elements and/or an applicable Capital Improvement Program, including the identification of additional public facility projects anticipated to be funded wholly or partially with development fees;
  - c. proposed changes to the boundaries of development fee districts, if applicable;
  - d. proposed changes to development fee schedules as set forth in the ordinances imposing and setting development fees for particular public facilities;
  - e. proposed changes to level of service standards for particular facilities;
  - f. proposed changes to any development fee calculation methodology;
  - g. proposed changes to the population, housing, land use, persons per household or non-residential development projections included in the Development Fee Calculation Methodology Report and upon which the development fee amounts have been determined;
  - h. other data, analysis or recommendations as the Town Manager or appropriate designee may deem appropriate, or as may be requested by the Mayor and Common Council.
3. The report may additionally include any or all of the following on a five-year basis:
  - a. number of building permits issued by type or residential or non-residential development;
  - b. square footage (gross floor area) of non-residential development;
  - c. total amount of development fees collected, by public facility and by land use type;
  - d. the amount of expenditures made from the development fee account or subaccounts and the purpose for which the expenditure was made, *i.e.*, the description, type and location of the public facility project;
  - e. when the public facility project was initiated and when it was (or will be) completed;
  - f. whether additional development fee funds will be appropriated for the same project in the future;
  - g. whether supplemental non-development fee funds have been used for the project and, if so, how much;
  - h. the service area for the public facility project;
  - i. the total estimated cost of the project and the portion funded with development fees;
  - j. whether the public facility project is in the Town's current Annual Budget or capital

improvements program;

- k. the estimated useful life of the project;
  - l. the extent to which the public facility project is needed to serve new/projected growth;
  - m. the extent to which the public facility project is needed to maintain the existing level of service (LOS) standard, and;
  - n. such other facts as may be deemed relevant by the Common Council.
4. Submission of Development Fee Five-Year Report and Common Council Action. The Town Manager or appropriate designee shall submit the Development Fee Five-Year Report to the Mayor and Common Council, which shall receive the Five-Year Report and which may take such actions as it deems appropriate, including, but not limited to, requesting additional data or analyses and holding public workshops and/or public hearings.

C. Affected Area.

- 1. Development Fee District. Development fees shall be imposed on new development in Fountain Hills which, for purposes hereof, may be divided into development fee districts by the Town.
- 2. Municipal Planning Areas. Development fees imposed by the Town may, if necessary and appropriate, be collected by other municipalities or by the County on new development within the Town's municipal planning area, but outside of the Fountain Hills Town limits, only pursuant to an intergovernmental agreement which provides that the development fees collected to be transferred to the appropriate Town fund for expenditure in accordance with the terms of this Ordinance.
- 3. Identification. The affected area, including development fee districts, if applicable, shall be described and/or mapped in the particular public facility development fee ordinance.
- 4. Changes in Boundaries of Development Fee Districts. The Town may amend the boundaries of the Development Fee Districts at such times as may be deemed necessary to carry out the purposes and intent of this Ordinance and applicable legal requirements for use of development fees. In the event of annexation of unincorporated County land into the Town, the Mayor and Common Council shall consider whether such annexed area should be included in a particular development fee district.

D. Type of Development Affected. This Ordinance shall apply to all new development as herein defined and as defined in the development fee ordinances for particular public facilities.

E. Type of Development Not Affected.

- 1 Previously-Issued Building Permits. No development fee shall be imposed on new development for which a building permit has been issued prior to the effective date of this Ordinance.
- 2 In-Process Building Permits. No development fee shall be imposed on new development for which a complete building permit application has been made, including all items as required on a

Town building permit application completeness form, and all plan check and building permit fees have been paid prior to the effective date of this Ordinance.

- 3 Previous Payment of Development Fees. Subject to the requirements of Section 4 of this Ordinance, no development fees shall be due at a later stage of the development permit or approval process if development fees have been paid for such category of public facilities at an earlier stage in the development permit or approval process.
- 4 No Net Increase in Dwelling Units. No development fee shall be imposed on any new residential development which does not add a new dwelling unit.
- 5 No Net Increase in Non-Residential Square Footage. No development fee shall be imposed on any new non-residential development which does not add square footage, unless the new non-residential development increases the demand for public facilities for which development fees are being imposed.
- 6 Other Uses. No development fee shall be imposed on a use, development, project, structure, building, fence, sign or other activity, whether or not a building permit is required, which does not result in an increase in demand for public facilities.
- 7 Development projects which are the subject of a Development Agreement containing provisions in conflict with this Article, but only to the extent of the conflict or inconsistency.
- 8 Development by Other Governmental Entities. Pursuant to Arizona Revised Statutes § 9-500.18, no development fee shall be imposed on new development by the State of Arizona, school districts organized pursuant to Arizona State laws, or the Federal Government, or agencies thereof; provided, however, that the Town may seek to negotiate the construction of public facilities or the provision of services, or to negotiate the payment of development fees, pursuant to a Development Agreement or Intergovernmental Agreement with such public governmental agencies.

F. Effect of Payment of Development Fees on Other Applicable Town Land Use, Zoning, Platting, Subdivision or Development Regulations.

1. The payment of development fees shall not entitle the applicant to a building permit unless all other applicable land use, zoning, planning, platting, subdivision or other related requirements, standards and conditions have been met. Such other requirements, standards and conditions are independent of the requirement for payment of a development fee.
2. Neither this Ordinance nor the specific development fee ordinances for particular public facilities shall affect, in any manner, the permissible use of property, density/intensity of development, design and improvement standards or other applicable standards or requirements of the Town land development regulations, which shall be operative and remain in full force and effect without limitation.

G. Amendments. This Ordinance, and any ordinance adopting development fees for any particular public facility pursuant to this Ordinance, may be amended from time to time by the Mayor and Common Council; provided, however, that no such amendment shall be adopted without a written report detailing the reasons and need for the development fee revision nor without proper notice and public hearing as set forth herein and in Arizona Revised Statutes § 9-463.05C.

Effect of Imposition of Development Fees in a Community Facilities District. In calculating and imposing a development fee applicable to land in a community facilities district established under Arizona Revised Statutes title 48, chapter 4, article 6, the Town shall take into account all public infrastructure provided by the district and capital costs paid by the district for necessary public services and facilities and shall not assess a portion of the development fee otherwise calculated to be due that would duplicate the infrastructure provided by the district or the costs imposed by the district on new development.

(00-21, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

#### **Section 7-10-4 Procedures for Imposition, Calculation and Collection of Development Fees**

- A. In General. An applicant shall be notified by the Town of the applicable development fee requirements at the time of application for a building permit via the issuance of a Development Fee Calculation Form to the applicant. Development fees shall be calculated by the Town at the time of application for a building permit and shall be paid by the applicant prior to the issuance of a building permit.
- B. Calculation.
  - 1. Upon receipt of an application for a building permit, the Town shall determine (a) whether it is a residential or non-residential use, (b) the specific category (type) of residential or non-residential development, if applicable, (c) if residential, the number of new dwelling units, (d) if non-residential, the number of new or additional square feet of gross floor area (rounded up to nearest square foot) and the proposed use, and (e) the development fee district in which the new development is located (if applicable).
  - 2. Upon receipt of an application for a building permit, the Town shall determine whether it is for a change in use. In such cases, the development fee due shall be based only on the incremental increase in the fee for the additional public facilities needed for the change in use.
  - 3. After making these determinations, the Town shall calculate the demand for the public facility added by the new development for each public facility category for which a development fee is being imposed and calculate the applicable development fee by multiplying the demand added by the new development by the amount of the applicable development fee per unit of development, incorporating any applicable offset if set forth in the particular development fee calculation methodology.
  - 4. If the type of land use proposed for new development is not expressly listed in the particular development fee ordinance and schedule, the Town shall:
    - a) identify the most similar land use type listed and calculate the development fee based on the development fee for that land use; or
    - b) identify the broader land use category within which the specified land use would apply and calculate the development fee based on the development fee for that land use category; or
    - c) at the option of the applicant, or the Director, determine the basis used to calculate the fee pursuant to an independent impact analysis for development fee calculation. This option shall be available only for street development fees and shall be requested by the applicant on a form provided by the Town for such purpose. If this option is chosen, the following shall apply:

- 1) The applicant shall be responsible, at its sole expense, for preparing, the independent impact analysis, which shall be reviewed for approval by the Director, and, if appropriate, by the Town Engineer or other Town staff or officials, prior to the payment of the fee.
  - 2) The independent impact analysis shall measure the impact that the proposed development will have on the particular public facility at issue, and shall be based on the same methodologies used in the Development Fee Calculation Methodology Report, and shall be supported by professionally acceptable data and assumptions.
  - 3) After review of the independent impact analysis submitted by the applicant, the Director shall accept or reject the analysis and provide written notice to the applicant of its decision on a form provided for such purpose within thirty (30) days. If the independent impact analysis is rejected, the written notice shall provide an explanation of the insufficiencies of the analysis.
  - 4) The final decision of the Director may be appealed pursuant to Section 6, herein.
5. An applicant may request a non-binding estimate of development fees due for a particular new development at any time by filing a request on a form provided for such purpose by the Community Development Department; provided, however, that such estimate may be subject to change when a formal application for a building permit for new development is made. Such non-binding estimate is solely for the benefit of the prospective applicant and shall in no way bind the Town nor preclude it from making amendments or revisions to any provisions of this Ordinance, the specific development fee implementing ordinances or the development fee schedules.
  6. The calculation of development fees due from a multiple-use new development shall be based upon the aggregate demand for each public facility generated by each land use type in the new development.
  7. The calculation of development fees due from a phased new development shall be based upon the demand generated by each specific land use within the phase of development for which a separate building permit is requested.
  8. Development fees shall be calculated based on the development fee amount in effect at the time of application for a building permit.

C. Offsets.

1. Offsets against the amount of a development fee due from a new development shall be provided for, among other things, contributions made or to be made in the future in cash, or by dedication of land or by actual construction of all or part of a public facility by the affected property owner for public facilities meeting or exceeding the demand generated by the new development and the contribution is determined by the Town to be a reasonable substitute for the cost of public facilities which are included in the particular development fee calculation methodology.
2. The amount of the excess contribution shall be determined by the Town upon receipt of an application form requesting an offset; provided, however, that (a) the Town will make no reimbursement for excess contributions unless and until the particular public facility fund has

sufficient revenue to make the reimbursement without jeopardizing the continuity of the Town's capital improvements program and (b) the excess contribution may not be transferred or credited to any other type of development fees calculated to be due from that development for other type of public facilities. The determination of the eligibility for and the amount of the credit shall be made by the Town on a form provided for such purposes. If the applicant contends that any aspect of the Town's decision constitutes an abuse of discretion, the applicant shall be entitled to appeal pursuant to Section 6.

3. No offset shall be allowed unless the Town has approved the contribution or expenditure before it is made.
4. Offsets for dedication of land or provision of public facilities shall be applicable only as to development fees imposed for the same types of public facilities which are proposed to be dedicated or provided. Even if the value of the dedication of land or provision of a public facility exceeds the development fee due for the type of public facility, the excess value may not be transferred to development fees calculated to be due from the applicant for other types of public facilities for which development fees may be imposed. Offsets may, however, be transferred to the same applicant or to other applicants for new development which are proposed within the final approved platted area of the same development and for the same type of public facility.

D. Collection.

1. The Town shall collect all applicable development fees at the time of issuance of a building permit and shall issue a receipt to the applicant for such payment unless:
  - a) the applicant is determined to be entitled to a full offset; or
  - b) the applicant has been determined to be not subject to the payment of a development fee; or
  - c) the applicant has filed an appeal and a bond or other surety in the amount of the development fee, as calculated, by the Town and approved by the Town Attorney and Town Accountant, has been posted with the Town.
2. The Town shall collect a development fee at the time of issuance of a building permit even if development fees were paid by the applicant at an earlier time in the development permit or approval process if the amount of the development fees have increased since such prior approval. Except as provided for in Section 3.F, the applicant shall only be liable for the difference between the development fees paid earlier and those in effect at the time of issuance of the subsequent building permit.

(00-21, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

**Section 7-10-5 Establishment of Development Fee Accounts; Appropriation of Development Funds; and Refunds**

- A. Development Fee Accounts. A development fee account shall be established by the Town for each category of public facilities for which development fees are imposed. Such account shall clearly identify the category, account, or fund for which the development fee has been imposed. Subaccounts may be established for individual development fee districts. All development fees



collected by the Town shall be deposited into the appropriate development fee account or subaccount, which shall be interest bearing. All interest earned on monies deposited to such account shall be credited to and shall be considered funds of the account. The funds of each such account shall be capable of being accounted for separately from all other Town funds, over time. The Town shall establish and implement necessary accounting controls to ensure that the development fee funds are properly deposited, accounted for and appropriated in accordance with this Ordinance, Arizona Revised Statutes § 9.463.05 and any other applicable legal requirements.

B. Appropriation of Development Fee Funds.

1. In General. Development fee funds may be appropriated for public facilities, for public facility expenditures as defined in Section 2.X, hereof and for the payment of principal, interest and other financing costs on contracts, bonds, notes or other obligations issued by or on behalf of the Town or other applicable local governmental entities to finance such public facilities and public facility expenditures. All appropriations from development fee accounts shall be detailed on a form provided for such purposes and filed with the Town Accountant.
2. Restrictions on Appropriations. Development fees shall be appropriated only (a) for the particular public facility for which they were imposed, calculated and collected, and (b) within the development fee district where collected unless the development fee funds will be appropriated for a public facility necessitated by or serving the new development as provided herein. Development fees shall not be appropriated for funding maintenance or repair of public facilities nor for operational or personnel expenses associated with the provision of the public facility.
3. Appropriation of Development Fee Funds Outside of District Where Collected. Development fee funds may be appropriated for a public facility located outside of the district where collected only if the demand for the public facility is generated in whole or in part by the new development or if the public facility will actually serve the new development.

C. Procedure for Appropriation of Development Fee Funds.

1. The Town shall each year identify public facility projects anticipated to be funded in whole or in part with development fees. The public facility recommendations shall be based upon the development fee annual review set forth in Section 3.B. herein and such other information as may be relevant, and may be part of the Town's annual budget and capital improvements programming process.
2. The recommendations shall be consistent with the provisions of this Ordinance, the particular public facility development fee ordinances, Arizona Revised Statutes § 463.05, or other applicable legal requirements and any guidelines adopted by the Mayor and Common Council.
3. The Mayor and Common Council may include development fee-funded public facilities in the Town's annual budget and capital improvements program. If included, the description of the public facility shall specify the nature of the facility, the location of the public facility, the capacity to be added by the public facility, the need/demand for the public facility and the anticipated timing of completion of the public facility.

4. The Mayor and Common Council may authorize development fee-funded public facilities at such other times as may be deemed necessary and appropriate by a majority vote of the Common Council.
5. The Mayor and Common Council shall verify that adequate development fee funds are or will be available from the appropriate development fee account for the particular public facility.

D. Refunds.

1. Eligibility for Refund.
  - a. Expiration or Revocation of Building Permit. An applicant who has paid a development fee for a new development for which the necessary building permit has expired or for which the building permit has been revoked prior to construction shall be eligible to apply for a refund of development fees paid on a form provided by the Town for such purposes.
  - b. Abandonment of Development After Initiation of Construction. An applicant who has paid a development fee for a new development for which a building permit has been issued and pursuant to which construction has been initiated, but which construction is abandoned prior to completion and issuance of a certificate of occupancy, shall not be eligible for a refund unless the uncompleted building is completely demolished.
  - c. Except as provided in Sections 5.D.1.a. and Section 5.D.5. hereof, refunds shall be made only to the current owner of property on which the new development was proposed or occurred.
2. A 5% administrative fee, but not to exceed \$200.00, shall be deducted from the amount of any refund granted and shall be retained by the Town in the appropriate development fee account to defray the administrative expenses associated with the processing of a refund application.
3. Processing of Applications for a Refund. Applications for a refund shall be made on a form provided by the Town for such purposes and shall include all information required in Sections 5.D.4. hereof. Upon receipt of a complete application for a refund, the Town shall review the application and documentary evidence submitted by the applicant as well as such other information and evidence as may be deemed relevant, and make a determination as to whether a refund is due. Refunds by direct payment shall be made following an affirmative determination by the Town.
4. Applications for refunds due to abandonment of a new development prior to completion shall be made on forms provided by the Town and shall be made within sixty (60) days following expiration or revocation of the building permit. The applicant shall submit (a) evidence that the applicant is the property owner or the duly designated agent of the property owner, (b) the amount of the development fees paid by public facilities category and receipts evidencing such payments, and (c) documentation evidencing the expiration or revocation of the building permit or approval of demolition of the structure pursuant to a valid Town-issued demolition permit. Failure to apply for a refund within sixty (60) days following expiration or revocation of the building permit or demolition of the structure shall constitute a waiver of entitlement to a refund. No interest shall be paid by the Town in

calculating the amount of the refund(s).

5. The Town may, at its option, make refunds of development fees by direct payment, by offsetting such refunds against other development fees due for the same category of public facilities for new development on the same property, or by other means subject to agreement with the property owner.

(Ord. 08-13, Amended, 05/15/2008; 00-21, Added, 11/16/2000, Approved by the Council, Effective 2/15/01 at 12:01 a.m.)

### **Section 7-10-6 Appeals**

- A. An appeal from any decision of a Town official pursuant to this Ordinance shall be made to the Mayor and Common Council by filing a written appeal pursuant to the appropriate Town form with the Town Clerk within thirty (30) days following the decision which is being appealed; provided, however, that if the notice of appeal is accompanied by a cash bond or letter of credit in a form satisfactory to the Town Attorney and the Town Accountant in an amount equal to the development fee calculated to be due, a building permit may be issued to the new development. The filing of an appeal shall not stay the imposition or the collection of the development fee as calculated by the Town unless a cash bond or other sufficient surety has been provided.
- B. The burden of proof shall be on the appellant to demonstrate that the decision of the Town is erroneous.
- C. All appeals shall detail the specific grounds therefore and all other relevant information and shall be filed on a form provided by the Town for such purposes.

(00-21, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

### **Section 7-10-7 Exemptions/Waivers**

- A. Filing of Application. Petitions for exemptions to the application of the provisions of this Ordinance or waivers from specific development fees shall be filed with the Mayor and Common Council on forms provided by the Town.
- B. Effect of Grant of Exemption/Waiver. If the Mayor and Common Council grants an exemption or waiver in whole or in part of development fees otherwise due, the amount of the development fees exempted or waived shall be provided by the Town from non-development fee funds, as may be provided in the particular development fee ordinances establishing development fees for particular public facilities, and such funds shall be deposited to the appropriate development fee account within a reasonable period of time consistent with the applicable Town capital improvements program.
- C. Development Agreements. Nothing herein shall be deemed to limit the Town's authority or ability to enter into Development Agreements pursuant to Arizona Revised Statutes § 9-500.05 with applicants for new development who may provide for dedication of land, payments in lieu of development fees, or actual infrastructure improvements. Such development agreements may allow offsets against development fees for contributions made or to be made in the future in cash, or by taxes or assessments or dedication of land or by actual construction of all or part of a public facility by the affected property owner.

(00-21, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

## **Section 7-10-8 Fees**

- A. All new residential (single family and multifamily) and non-residential development in the Town shall be subject to payment of the development fees in amounts as periodically adopted and adjusted by the Town Council pursuant to ARIZ. REV. STAT. § 9-463.05, as amended.
- B. Pursuant to ARIZ. REV. STAT. § 9-463.05(F), as amended, the development fees adopted by the Town Council according to this section will automatically adjust for inflation using the Engineering News Record - 20 City Construction Cost Index (ENR-CCI) on the first day of each Fiscal Year following adoption. The Town shall provide public notice of such annual adjustments at least thirty (30) days in advance of their effective dates.
- C. The amounts of the development fees adopted or adjusted as set forth above shall be set forth in a fee schedule adopted by the Town Council by ordinance, resolution or as part of the Town's annual budget.

(09-09, Amended, 12/03/2009, Fee schedule included in the Ordinance.; Ord. 08-13, Amended, 05/15/2008; 06-02, Amended, 05/04/2006, Chart listed in Section #2 was deleted as the annexation of the State Trust Land was completed on May 4, 2006, which was prior to the July 1, 2006 deadline that then required the Chart listed in Section #3 be the rates used for calculations.; 06-07, Amended, 03/16/2006; 06-06, Amended, 01/19/2006; 06-02, Amended, 01/05/2006, Heading was previously named Town Marshal Development Fee/Effective 90 days after the adoption of this Ordinance; 01-02, Amended, 01/18/2001, Council Amended 00-22, Effective 4/19/01 at 12:01 a.m. ; 00-22, Added, 11/16/2000, Approved by Council, Effective 2/15/2001 at 12:01 a.m.)

## **Section 7-10-9 Permit Issuance**

- A. Building permits shall be deemed issued when the applicant has submitted a full and complete set of building documents; paid fees in full; and has executed a Minimum Plan Submittal Requirements Sheet obtained from the Community Development Department.
- B. All subsequent plan review, modification of plans, or other interaction with the Department shall not be considered as new construction for the purposes of the fees adopted and in force in Sections 7-10-8, 7-10-9, 7-10-10, 7-10-11 and 7-10-12 of this Article, so long as construction has commenced within 180 days of the issuance of the building permit.
- C. Any single-family or multi-family residential building permit issued prior to 12:01 A.M. on February 15, 2001 for which there has been no construction activity for 180 days may apply for an extension of additional time as provided for by the Uniform Building Code. Any non-residential building permit issued prior to 12:01 A.M. on April 19, 2001 for which there has been no construction activity for 180 days may apply for an extension of additional time as provided for by the Uniform Building Code. Such extension, however, shall require the applicant to pay the then current development fees, unless a waiver is applied for within 180 days after the building permit was issued and such waiver is granted by the Town Council. If a fee waiver request is denied by the Council, all due development fees shall be paid to the Town within 30 days of Council denial or the building permit(s) for which the development fee waiver was requested will be revoked.
- D. Subsequent to the close of business on February 14, 2001, all building permits will be subject to all single family and multi-family building permits will be subject to all provisions of Article 7 – regarding development fees.

E. Subsequent to the close of business on April 19, 2001 all non-residential building permits will be subject to all provision of Article 7 - regarding development fees.

(06-02, Delete Renumbered, 01/05/2006, Previous heading named Street Development Fee - deleted and Section 7-10-13 renumbered to 7-10-9; 01-04, Amended, 01/18/2001, Council Amended 00-23, Effective 4/19/01 at 12:01 a.m.; 00-23, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

### **Section 7-10-10Repealed**

#### **Repealed**

(06-02, Repealed, 01/05/2006; 00-24, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

### **Section 7-10-11Repealed**

#### **Repealed**

(06-02, Repealed, 01/05/2006; 00-25, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

### **Section 7-10-12Repealed**

#### **Repealed**

(06-02, Repealed, 01/05/2006; 01-03, Amended, 01/18/2001, Council Amended 00-26, Effective 4/19/01 at 12:01 a.m.; 00-26, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

### **Section 7-10-13Renumbered**

#### **Renumbered**

(06-02, Renumbered, 01/05/2006, Renumbered as Section 7-10-9; 01-05, Amended, 01/18/2001, Council Approved amending 00-27, Effective 4/19/01 12:01 a.m.; 00-27, Added, 11/16/2000, Approved by Council )

## **Article 7-11**

### **ENFORCEMENT OF STATE RESIDENTIAL RENTAL PROPERTY REGISTRATION**

#### **Sections:**

#### **7-11-1 Enforcement of State Residential Rental Property Registration**

##### **Section 7-11-1 Enforcement of State Residential Rental Property Registration**

- A. "Residential rental property" shall have the same meaning as provided by Ariz. Rev. Stat. § 33-1901, as amended.
- B. All owners of residential rental property located within the corporate boundaries of the Town shall register with the Maricopa County Assessor the information required by Ariz. Rev. Stat. § 33-1902, as amended, in the manner prescribed by the Assessor.
- C. The Town shall assess a civil penalty in accordance with Ariz. Rev. Stat. § 33-1902, as amended, against any owner who fails to comply with the provisions thereof.

(09-05, Added, 03/05/2009)

## **Article 7-12**

### **ILLEGAL CONSTRUCTION SITE ACTIVITY**

#### **Sections:**

- 7-12-1 Purpose and Intent**
- 7-12-2 Mitigation of Negative Impacts**
- 7-12-3 Building Permit Extension of Time**
- 7-12-4 Unrelated Equipment, Material or Debris**
- 7-12-5 Authority of Chief Building Official**

#### **Section 7-12-1 Purpose and Intent**

The Town of Fountain Hills supports legal building activity in all its forms. The Town also recognizes that certain building activities may negatively impact adjacent property. While these impacts should be tolerated for the initial period of time associated with typical building activity, their prolonged existence can be a nuisance, particularly to adjacent neighbors. This Article is adopted for the purpose of mitigating the negative impacts that unreasonably prolonged building-related activities have on neighboring property.

(09-07, Added, 09/17/2009)

#### **Section 7-12-2 Mitigation of Negative Impacts**

- A. The owner of any property subject to a building permit for construction activity on that property shall not maintain on the property, or allow to be maintained on the property, construction activities that cause unreasonable negative health, safety or welfare impacts to neighboring properties.
- B. If a building permit is expired for construction on property, the owner thereof shall immediately (1) remove, or cause to be removed, any construction equipment, materials and debris and (2) restore the property to as safe a condition as existed prior to commencement of construction activities thereon, as determined by the Chief Building Official.
- C. The Chief Building Official shall (1) notify the property owner of any conditions on such property that are in violation of Subsection 7-12-2(A) or (B) above by first class mail and (2) provide the property owner with a reasonable period of time to correct or mitigate the condition. The Chief Building Official shall determine if and when the condition has been corrected.
- D. Should the condition continue beyond a reasonable period of time, as determined by the Chief Building Official and included in the notice request under Subsection 7-12-2(C) above, the property shall be considered a nuisance pursuant to Article 10-2 of this Code and shall be subject to all penalties related thereto. In addition to prosecuting the nuisance in the manner described in this Code, the Town may, at its sole option, also cause the removal of such nuisance by any means permitted pursuant to Ariz. rev. Stat. § 9-499, as amended, or Article 10-4 of this Code.

(09-07, Added, 09/17/2009)

**Section 7-12-3 Building Permit Extension of Time**

- A. Prior to any extension of time granted to a property owner for a building permit, the Chief Building Official shall inspect the property to ensure that no unsafe conditions exist and that the property owner is not in violation of any provision of this Article 7-12.
- B. Prior to extending any permit, the Chief Building Official shall ensure that any stock piled dirt or other construction material is fully contained on the property and does not exceed a height of twenty-five (25) feet, measured from natural grade.

(09-07, Added, 09/17/2009)

**Section 7-12-4 Unrelated Equipment, Material or Debris**

- A. It shall be a violation of this Code for a property owner or contractor to keep on property any equipment, material or debris unrelated to authorized construction activity on the property.
- B. It shall be the responsibility of the property owner to ensure that all debris resulting from authorized construction is contained within an approved container on the site.

(09-07, Added, 09/17/2009)

**Section 7-12-5 Authority of Chief Building Official**

The provisions of this Article shall not restrict or otherwise limit the ability of the Chief Building Official to take whatever action may be necessary in the event of an immediate threat to public health or safety as a result of any construction related activity.

(09-07, Added, 09/17/2009)